

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
MICHAEL C. SCHRENKEL : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 826172
York State Personal Income Tax under Article 22 of the :
Tax Law for the Years 2006, 2007 and 2008. :

Petitioner, Michael C. Schrenkel, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the years 2006, 2007 and 2008.

A hearing was held before Kevin R. Law, Administrative Law Judge, in Albany, New York, on September 28, 2015, with all briefs due by February 16, 2016, which date began the six-month period for issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Brian J. McCann, Esq., of counsel). After review of the documents and arguments submitted, Kevin R. Law Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly determined petitioner's tax liability for the years 2006, 2007 and 2008.

FINDINGS OF FACT

1. On September 20, 2012 the Division of Taxation (Division) issued three separate statements of proposed audit changes to petitioner, Michael C. Schrenkel, proposing New York

State personal income tax due as follows:

Assessment No.	Tax Year	Tax Amount Assessed	Interest Assessed	Penalty Assessed	Payments and Credits	Balance Due
L-038586514-4	2006	\$10,388.00	\$5,250.87	\$5,741.83	\$0.00	\$21,380.70
L-038586515-3	2007	\$20,796.00	\$7,911.74	\$10,216.32	\$0.00	\$38,924.06
L-038586516-2	2008	\$13,139.00	\$3,857.78	\$5,871.29	\$0.00	\$22,868.07

2. The proposed tax was computed based upon information obtained from the Internal Revenue Service and from information from the Division's wage reporting system. The proposed tax was also computed by allowing petitioner the standard deduction of \$7,500.00 in each year. Penalties for failing to file returns pursuant to Tax Law § 685(a)(1), and for negligence pursuant to Tax Law § (b)(1) and (2) were also asserted.

3. The respective statements all indicate that letters had previously been sent to petitioner advising him that he may have an income tax liability for the years in question and that the Division had no record of petitioner filing New York State personal income tax returns for the years in question. The record does not contain any copies of the referenced letters.

4. The tax for 2006 was determined based upon the following payers and income amounts:

PAYER	AMOUNT/Payment type
Verizon New York, Inc.	\$70,575.00/wages
Verizon Services Corp	\$70,575.00/wages
Fidelity Investments	\$17,994.00/1099-R
Select Portfolios	\$14.00/interest
TOTAL	\$159,158.00

5. The tax for 2007 was determined based upon the following payers and income amounts:

PAYER	AMOUNT/Payment type
Verizon New York, Inc.	\$21,582.00/wages
Verizon Communications	\$11,363.00/wages
Verizon Services Corp	\$21,582.00/wages
Fidelity Investments	\$8,644.00/1099-R
National Financial	\$25,000.00/1099-R
Home Loan Services	\$254,248.00/1099-A
TOTAL	\$342,419.00

6. The tax for 2008 was determined based upon the following payers and income amounts:

PAYER	AMOUNT/Payment type
Verizon Services Corp	\$194.00/wages
Metropolitan Life Ins,	\$34,668.00/wages
Home Loan Services	\$129,992.00/1099-A
Verizon Communications	\$34,668.00/wages
National Financial	\$20,000.00/1099-R
TOTAL	\$219,522.00

7. On November 6, 2012, the Division issued three separate notices of deficiency to petitioner for the tax years 2006, 2007 and 2008 for tax, penalty and interest as proposed by the respective statements of proposed audit changes.

8. The Division introduced the affidavit of Kathryn Selke, a Tax Technician 2, who reviewed the deficiencies at issue. Ms. Selke's affidavit describes the Division's general process by which notices of deficiency are generated in the case of nonfilers who have income sources. Ms. Selke averred that since the Division's billing system for nonfilers draws information from different sources to obtain income information, the possibility for duplication can occur. In this case, Ms. Selke averred that \$70,575.00 should be removed from audited gross income for 2006;

\$21,582.00 should be removed from audited gross income for 2007; and \$34,668.00 should be removed from audited gross income for 2008.

9. Ms. Selke also determined that the amounts included in petitioner's audited gross income for 2007 (\$254,248.00) and 2008 (\$129,992.00) reported on forms 1099-A should also be removed from audited gross income in determining petitioner's income tax liability for the years at issue. Ms. Selke averred that it is the Division's current policy not to include such amounts in gross income in computing the tax liability of a nonfiler.

10. Based upon the Division's conceded adjustments detailed in Findings of Fact 8 and 9, the deficiencies for 2006, 2007 and 2008, exclusive of interest and penalties, were recomputed to be \$5,175.00, \$3,218.00 and \$2,833.00, respectively.

11. At the hearing in this matter, petitioner submitted forms 1099-A for tax years 2007 and 2008. Both 1099-As indicate petitioner's property at 263 Myers Corner Road in Wappingers Falls, New York, was foreclosed upon on October 25, 2007. Petitioner testified that this property was his primary residence until the October 25, 2007 foreclosure. In his post hearing brief, petitioner states that 263 Myers Corner Road was renamed 5 O'Neil Farm Lane for 911 purposes.

12. The record was left open for petitioner to submit additional documentation. To that end, petitioner submitted the following:

- (i) a school tax receipt from the Beacon City School District for \$4,588.87 of real property taxes paid on October 12, 2006 imposed on property located at 25 Chelsea Road;
- (ii) a property tax receipt from the Town of Wappingers Falls for \$1,703.75 of taxes paid on February 28, 2006 imposed on property located at 25 Chelsea Road;
- (iii) a property tax receipt from the Town of Wappingers Falls for \$1,549.49 of taxes paid on August 31, 2006 imposed on property located at 5 O'Neil Farm Lane.

- (iv) a school tax bill from the Wappinger Central School District #1 for \$3,212.09 indicating a due date of October 10, 2006 imposed on property located at 5 O'Neil Farm Lane.
- (v) a property tax receipt from the Town of Wappingers Falls for \$1,876.57 of taxes paid on February 28, 2007 imposed on property located at 25 Chelsea Road;
- (vi) a school tax receipt for to the Beacon City School District for \$4,428.67 of real property taxes paid on October 23, 2007 imposed on property located at 25 Chelsea Road;
- (vii) a property tax receipt from the Town of Wappingers Falls for \$1,808.41 of taxes paid on February 19, 2008 imposed on property located at 25 Chelsea Road; and
- (viii) a school tax receipt from the Beacon City School District for \$4,241.84 of real property taxes paid on or about October 16, 2008 imposed on property located at 25 Chelsea Road.

13. An Internal Revenue Master File (IRMF) report attached to the affidavit of Ms. Selke lists National City Home L in 2006 and Select Portfolio Serv in 2006 and 2008 as the payer of "points." The Division did not use these amounts in the calculation of tax due and there is no indication that petitioner was the payer of interest or points to these two entities.

CONCLUSIONS OF LAW

A. Tax Law § 681(a) provides, in pertinent part, as follows:

"If a taxpayer fails to file an income tax return required under this article, the tax commission is authorized to estimate the taxpayer's New York taxable income and tax thereon, from any information in its possession, and to mail a notice of deficiency to the taxpayer."

B. When the Division properly issues a notice of deficiency to a taxpayer, a presumption of correctness attaches to such notice (*Matter of Hickey*, Tax Appeals Tribunal, August 12,

2004; *Matter of Atlantic & Hudson Ltd. Partnership*, Tax Appeals Tribunal, January 30, 1992). In proceedings for review of a properly issued notice of deficiency, the burden of proof is on the taxpayer to demonstrate that the deficiency assessment is erroneous (Tax Law § 689[e]).

C. In this case, petitioner failed to file New York State personal income tax returns for the years 2006, 2007 and 2008. Based upon information obtained from the IRS that showed petitioner had income that would necessitate the filing of returns, notices of deficiency were issued utilizing such information. Based upon a careful review of the amounts comprising the deficiencies, the Division has determined adjustments are in order. While petitioner is generally in agreement with the revised income amounts determined, he claims there should be further adjustments by way of itemized deductions for mortgage interest and for real property taxes. The record, however, does not bear out petitioner's contentions in a clear and convincing manner.

D. IRC § 163 allows an itemized deduction for interest paid or accrued on acquisition indebtedness or home equity indebtedness secured by the taxpayer's principal or second residence. Petitioner, however, did not submit any documentation establishing his entitlement to such a deduction. Instead, petitioner relies upon an IRMF report that lists National City Home L in 2006 and Select Portfolio Serv in 2006 and 2008 as the payer of "points." The Division did not use these amounts in the calculation of tax due and there is no indication that petitioner was the payer of interest or points to these two entities. The IRMF report lists these entities as the payer rather than petitioner. The best evidence of petitioner's contentions would be forms 1098 issued by his mortgage lender, documents which are absent from the record in this matter. In addition, the fact that petitioner's primary residence was foreclosed upon in 2007 supports a conclusion that he did not make mortgage payments in 2006 and 2007 on the mortgage premises and therefore did not make interest payments on this property.

E. IRC § 164 allows for an itemized deduction for real property taxes imposed by state, local and foreign governments. It is determined that the receipts and bills on the 25 Chelsea Road property are prima facie evidence that petitioner incurred the school and property taxes imposed by the Town of Wappinger Falls and the Beacon City School District, respectively. There is no serious dispute that petitioner did not incur such taxes. Nonetheless, the tax payments for the 5 O'Neil Farm Lane property have not been substantiated. As noted in Finding of Fact 11, the 5 O'Neil Farm Lane property was foreclosed upon in 2007. As with the mortgage interest payments on this property, the record supports a conclusion that he did not make mortgage payments in 2006 and 2007 on this property and consequently did not make tax payments on this property either. This conclusion is further supported by the school tax bill from the Wappingers Central School District #1, which does not indicate payment; nor did petitioner provide any other documentation establishing that he made such payment.

F. Petitioner has offered no evidence that would provide a basis for modifying or cancelling the deficiencies under protest any further than already modified by concession of the Division in the Selke affidavit. While petitioner has established his entitlement to claim the property tax payments on the 25 Chelsea Road property, the sum of such payments during the years in question is not in excess of the standard deduction utilized by the Division in determining the tax due. As a result, petitioner has not overcome the presumption of correctness that accompanies a notice of deficiency (*Matter of Leogrande v. Tax Appeals Tribunal*, 187 AD2d 768 [1992], *lv denied* 81 NY2d 704 [1993]; *Matter of Tavalacci v. State Tax Commn.*, 77 AD2d 759 [1980]).

G. Penalties for failing to file returns pursuant to Tax Law § 685(a)(1) and for negligence pursuant to Tax Law § (b)(1) and (2) were asserted in the respective notices of deficiency.

Petitioner has provided no basis to support any reduction to or abatement of penalties properly imposed in these matters.

H. The petition of Michael C. Schrenkel is denied and the notices of deficiency, dated November 6, 2012, as modified by the concessions of the Division (*see* Finding of Fact 10), are sustained.

DATED: Albany, New York
July 21, 2016

/s/ Kevin R. Law
ADMINISTRATIVE LAW JUDGE